granting certiorari only when a final judgment had been entered in the courts below.

Even when there has existed a clear conflict between Circuits in previously decided (thus already final) cases, this Court has refused to grant certiorari in a case which was at an interlocutory stage. The Third and Seventh Circuits had conflicting decisions in *Fields* v. *Washington*, 173 F.2d 701 (3 Cir., 1949) and *Adler* v. *Northern Hotel Co.*, 175 F.2d 619 (7 Cir., 1949), respectively. In a subsequent District Court case within the Seventh Circuit, the defendant's motion to dismiss for lack of jurisdiction was denied on the authority of the Seventh Circuit decision. The defendant petitioned this Court for a writ of certiorari on the basis of the existing conflict between Circuits. The plaintiff filed a memorandum conceding the conflict between Circuits and urging this Court to grant certiorari. Certiorari was denied. *The Arlington, Inc.* v. *Mayer*, 339 U.S. 965 (1950).

III. The Decision Of The First Circuit Court Of Appeals Is In No Way In Conflict With Any Decided Case Of This Court.

The only other ground advanced by Industrial in support of its petition is that the decision of the First Circuit Court of Appeals is "in conflict with applicable decisions of this Court." Respondent does not wish to undertake a discussion of the merits of the case at this point; however, it does wish to point out that the First Circuit Court very conservatively followed the applicable decisions of this Court and based its decision on an analysis of the statute in question in the light of this Court's decisions under other statutes. It cannot be too strongly emphasized that the decision of the First Circuit was one of statutory construction and was not a decision of constitutional mag-

nitude. This is plain from a comparison of the two cases, *Arnold Tours, Inc.* v. *Camp* and *The Wingate Corporation* v. *Industrial National Bank,* which were decided together with opposite results by the First Circuit Court in its decision. (Pet. App. B., page 10).

IV. This Case In Its Present Posture Does Not Meet Any Of The Criteria For Review On Certiorari As Outlined In Supreme Court Rule Nineteen Or In The Applicable Decisions Of This Court.

In *American Construction Company* v. *Jacksonville, Tampa & Key West Railway Company, supra,* Justice Gray said:

> "Whether an interlocutory order may be separately reviewed by the appellate court in the progress of this suit, or only after and together with the final decree, is matter of procedure rather than of substantial right; and many orders made in the progress of a suit become quite unimportant by reason of the final result, or of intervening matters. Clearly, therefore, this court should not issue a writ of certiorari to review a decree of the Circuit Court of Appeals or appeal from an interlocutory order, unless it is necessary to prevent extraordinary inconvenience and embarrassment in the conduct of the cause."

This case appears to present every reason for not granting certiorari and no substantial reasons for granting it. No extraordinary inconvenience or embarrassment would result from a denial of certiorari at this time. As has been pointed out, the specter of the grave problems which could befall national banks by reason of a conflict between the Circuits cannot materialize before a final decision is en-

tered and probably will not materialize even then. Aside from the fact that Industrial would prefer the security of a favorable decision from this Court, there does not seem to be any impending disaster to the banking industry.

Respondent concedes that the issues raised in its complaint do present an important question of substantive Federal law. Unfortunately, it does not seem to Respondent that these questions are ripe for decision by this Court. Only the question of standing is at issue. No factual determinations have been made upon which a judgment on the substantive questions could be based.

While the underlying substantive issue in this case may be of national importance, the question of standing to litigate is primarily of importance to the individual litigants. The question was decided not on constitutional principles but on questions of construction of a very specific statute. Since it is the underlying principles which are of such great national importance, it would seem to be appropriate for this Court to postpone its consideration of this case until those issues are reached. The decision on the substantive issues will probably also resolve all questions of standing in cases on similar facts.

Possibility Of Certiorari To Consider The Substantive Merits

The opposition of the Respondent to the granting of Industrial's petition for a writ of certiorari is based on its opinion that this case is not in an appropriate posture to decide the underlying substantive question of the legality of Industrial's data processing activities. Should this Court feel that a decision as to the substantive legal issues is appropriate in this case under the doctrine followed in *Harriman* v. *Northern Securities Co.*, 197 U.S. 244, 25 S. Ct. 493, 49 L ed 739 (1905), Respondent would have no objection to an argument of the entire case on the merits.

Only if it appears that the substantive legal questions can be resolved at this stage does it seem that the granting of the writ of certiorari would not be a waste of this Court's time.

Conclusion

Since the instant case is at an interlocutory stage and there does not appear to be any judicially recognizable risk to the stability of the banking industry as long as no final decision has been entered in this case, the traditional concept of a denial of certiorari absent a final decision would seem most appropriate in this case. The lack of a final decision has left the banking industry with a uniform national rule. If a final decision is entered in the future which is favorable to the Respondent, the fact that the Comptroller of Currency has intervened in this case makes it likely that a uniform national rule will still result.

Respondent therefore respectfully requests that the petition for certiorari be denied until such time as the substantive issues can be presented for review.

Respectfully submitted,

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